CONSTITUTIONAL LAW — VESTED RIGHTS — STATUTE MAKING ONE-TENTH OF INCOME OF SPENDTHRIFT TRUST LIABLE TO EXECUTION. — On recovering judgment from the defendant, the plaintiff moved for special execution against ten per cent of the income of a spendthrift trust created in 1879. This was permitted under a statute passed in 1908. *Held*, that the statute, in operating upon existing trust funds, was not unconstitutional. *Brearley School* v. *Ward*, 201 N. Y. 358.

The New York Real Property Law provides that the surplus income of a trust fund beyond the sum necessary for the education and support of the beneficiary should be liable to the claims of creditors. CONSOL. LAWS OF N. Y., 1909, REAL PROPERTY LAW, c. 52, § 98. The statute in the principal case increases the amount of income subject to execution. CODE CIV. PROC., § 1391, as amended by c. 148, LAWS OF 1908. The question is whether the statute takes away property without due process of law, in affecting existing trust funds. That depends on the nature of the beneficiary's right to exemption from execution. At common law in New York, the whole income from trust funds was liable to the claims of creditors. *Bryan* v. *Knickerbacker*, 1 Barb. Ch. (N. Y.) 409. The right of the beneficiary to exemption seems no greater than that of debtors under other exemption laws. Legislation decreasing the amount of exemption allowed to debtors is clearly valid. *Leak* v. *Gay*, 107 N. C. 468. The privilege of exemption declared by statute creates no vested right in the debtor and may be taken away by change of statute. *Bull* v. *Conroe*, 13 Wis. 233. See COOLEY, PRINCIPLES OF CONSTITUTIONAL LAW, 3 ed., 332. The effect of the decision in the principal case, moreover, is salutary in lessening the evils of spendthrift trusts. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., xi. That the statute does not impair the obligation of a contract seems clear, for even if there be any contract its obligation is not impaired. *Cf.* *Holland* v. *Dickerson*, 41 Ia. 367.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — STOCK CERTIFICATES NOT SUBJECT TO ATTACHMENT. — The plaintiff sought to obtain jurisdiction over a non-resident defendant by publication of service, and attachment of the certificates of stock of a foreign corporation, which were owned by the defendant, but bailed to a third party within the state. *Held*, that jurisdiction over the defendant has not been acquired. *Maertens* v. *Scott*, 80 Atl. 369 (R. I.). See NOTES, p. 74.

CORPORATIONS — DIRECTORS — ELIGIBILITY OF DUMMY DIRECTOR. — Five shares of stock were transferred to A. without consideration, and the transfer recorded. A. immediately indorsed the certificate to his grantor, but his name remained as a stockholder on the company's transfer book. *Held*, that A. was eligible to be a director under a statute requiring directors to be stockholders. *In re Ringler & Co.*, 130 N. Y. Supp. 62 (App. Div.).

Where the beneficial ownership of stock and the record title to it are in different persons, the record owner has the right to vote it, as far as the corporation is concerned. *In re Argus Printing Co.*, 1 N. D. 434. An exception is made where the record owner is a trustee of stock owned by the corporation, as such stock has no vote. *American Railway-Frog Co.* v. *Haven*, 101 Mass. 398. Also, where actual fraud is shown to be contemplated, the record holder may not vote. *Smith* v. *San Francisco & North Pacific R. Co.*, 115 Cal. 584. It seems settled that the record owner, and not the beneficial owner, is eligible to be a director under a statute requiring a director to be a stockholder. *State ex rel. White* v. *Ferris*, 42 Conn. 560. *Contra*, *State ex rel. Reed* v. *Smith*, 15 Or. 98. This rule is probably correct as a strict construction of the word "stockholder," in view of the rule as to voting. Yet it defeats the purpose of the statute, which obviously was to have the directors pecuniarily interested in

the success of the corporation. The case of a dummy director is within the above rule, and the principal case accords with the one decision exactly in point. *State ex rel. Rankin* v. *Leete*, 16 Nev. 242. But where the purpose of creating a dummy director is to perpetrate a fraud, his eligibility is not sustained. *Bartholomew* v. *Bentley*, 1 Oh. St. 37; *Frank and Kneeland* v. *Lewis Foundry & Machine Co.*, 24 Pitts. Leg. J. (Pa.) 33.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — EMPLOYMENT OF ATTORNEYS TO DEFEND SUIT BROUGHT BY MINORITY TO RESTRAIN ULTRA VIRES ACTION. — The majority stockholders of a religious corporation in good faith employed the plaintiffs as counsel to defend an action brought by the minority stockholders to restrain an alleged improper use of a corporate fund. The defense of the majority was unsuccessful. The plaintiffs sought to recover of the corporation compensation for their services. *Held*, that the corporation is liable. *Kanneberg* v. *Evangelical Creed Congregation*, 131 N. W. 353 (Wis.).

The decision in the principal case may be supported on two grounds. Either it was within the power of the corporation acting through a majority of its stockholders to make the contract; or it was an executed *ultra vires* contract to which it has no defense. But the case raises the question as to the ultimate liability of the corporation for attorneys' fees in litigation between the majority and the minority stockholders. Recovery from the corporation by the minority is conditioned upon success. They are clearly entitled to reimbursement if they succeed in restoring assets to the corporation. *Trustees* v. *Greenough*, 105 U. S. 527. Generally they may recover if they preserve assets by restraining an improper use of property. *Forrester & MacGinnis* v. *Boston, etc. Mining Co.*, 29 Mont. 397. *Contra*, *Alexander* v. *Atlanta, etc. R. Co.*, 113 Ga. 193. Where the majority stockholders and not the corporation are the real party in interest, they must account for corporation funds paid to attorneys. *Wickersham* v. *Crittenden*, 106 Cal. 329. And where they have not acted in good faith, their claims against the corporation for legal expenses will not be allowed. *M'Court* v. *Singers-Bigger*, 145 Fed. 103. But for mistakes of judgment honestly exercised, the corporation must suffer. See *Ellerman* v. *Chicago Junction Railways, etc. Co.*, 49 N. J. Eq. 217, 232. This rule should apply where, as in the present case, the majority in good faith defend unsuccessfully an action brought by the minority shareholders.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — SUIT IN BEHALF OF CORPORATION BY ONE ACQUIRING STOCK AFTER WRONG. — The plaintiff, a stockholder of a corporation, brought an action to set aside as fraudulent a transfer of the stock of the corporation. He acquired the stock after the transaction was completed. *Held*, that the plaintiff may maintain the action. *Pollitz* v. *Gould*, 45 N. Y. L. J. 591 (N. Y., Ct. App., April, 1911).

In order to put an end to collusive transfers of stock for the purpose of getting into the federal courts, the Supreme Court has adopted a rule of procedure which requires a stockholder, who brings an action like the one in the main case, to prove that he owned stock when the alleged fraud was committed. SUP. CT. RULES OF PRACTICE, Rule 94, 104 U. S. ix. See *Hawes* v. *Oakland*, 104 U. S. 450. At least one state court has come to the same conclusion, arguing from general equitable principles. *Home Fire Ins. Co.* v. *Barber*, 67 Neb. 644. But the decision in the principal case adds to an increasing weight of authority, and is to be welcomed as supporting the better view. For a full discussion of the principles involved, see 21 HARV. L. REV. 195.

COVENANTS OF TITLE — COVENANT AGAINST INCUMBRANCES — EASEMENTS. — In an action for specific performance of an agreement to buy a piece of land, which the vendor had covenanted should be free from incumbrances,